UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

PROGRESS ENVIRONMENTAL LLC and
EVER AGUILAR-HERNANDEZ d/b/a
GENERAL LABORERS

Joint Employer

and Case 05-RC-177206

CONSTRUCTION AND MASTER LABORERS'
LOCAL 11, A/W LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA (LIUNA)

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

The Petitioner, Construction and Master Laborers' Local 11, a/w Laborers' International Union of North American (LIUNA),[1] seeks to represent a unit of all full-time and regular part-time construction and demolition laborers, including environmental abatement workers, jointly employed by Progress Environmental, LLC (Progress),[2] and Ever Aguilar-Hernandez d/b/a General Laborers (Aguilar-Hernandez),[3] excluding all clerical, confidential and management employees, professionals, guards, and supervisors as defined in the Act. A hearing in this matter was conducted before a hearing officer of the Board on June 10, 2016, and the parties orally argued their respective positions prior to the close of the hearing. On June 24, 2016, I dismissed the petition on the grounds that Progress and Aguilar-Hernandez met their burden of establishing an imminent cessation of operations for the petitioned-for unit employees, relying on *Davey McKee Corp*., 308 NLRB 839 (1992).

On July 8, 2016, the Petitioner filed a request for review of my Decision and Order. The Petitioner requested that this review be held after the Board issued its pending decision for *Retro Environmental, Inc./ Green JobWorks, LLC,* Case 05-RC-153468. According to the Petitioner, *Retro Environmental, Inc./Green JobWorks, LLC* presented the same substantial question of law and policy raised in the instant case, specifically, the imminent cessation of operations doctrine of *Davey McKee.* On August 16, 2016, the Board issued *Retro Environmental., Inc./Green*

[1] The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

[2] Progress is a limited liability company with an office and place of business in Capitol Heights, Maryland, and has been engaged in the business of environmental remediation, including asbestos remediation. In conducting its operations during the previous twelve months, Progress, in conducting its operations, performed services valued in excess of $50,000 in states other than the State of Maryland.

[3] Aguilar-Hernandez is a sole proprietor doing business as General Laborers. During the 12-month period ending May 31, 2016, Aguilar-Hernandez, in conducting its operations, provided services valued in excess of $50,000 for Progress, an enterprise directly engaged in interstate commerce, within the State of Virginia. The record contains invoices from Aguilar-Hernandez to Progress, and payments from Progress to Aguilar-Hernandez, in excess of $50,000 for services Aguilar-Hernandez provided to Progress in the state of Virginia.

JobWorks, LLC, 364 NLRB No. 70 (2016). In that decision, the Board found that the employers failed to meet their burden of proving an imminent cessation of operations. Consequently, the Board reinstated the petition and remanded the case. Two weeks later, the Petitioner filed a Notice of Supplemental Authority and Request for Reconsideration of my prior dismissal of the petition in this case, citing the Board's decision in *Retro/Green JobWorks*. Further, the Petitioner sought to make an offer of proof regarding the issue of the alleged imminent cessation of operations, representing that it was prepared to present evidence on this issue. I granted the Petitioner's request for reconsideration, and ordered that the hearing be reopened, pursuant to the Petitioner's request to present additional evidence. Subsequently, the parties elected to not present any additional evidence into the record, and the hearing was not reopened.

This case involves two principle issues: (1) whether Progress and Aguilar-Hernandez are joint employers under the Act; and, (2) whether the petition should be dismissed pursuant to an imminent cessation of operations, as an election would not serve a useful purpose if the putative joint-employment of the petitioned-for unit employees will cease in the near future.

I. PROGRESS AND AGUILAR-HERNANDEZ ARE JOINT EMPLOYERS OF THE EMPLOYEES FOR THE PETITIONED-FOR UNIT.

On the first issue, as detailed in my June 24, 2016 decision, I conclude that the Petitioner met its burden to demonstrate that Progress and Aguilar-Hernandez are joint employers of the petitioned-for unit employees. This issue will not be revisited or revised here.[4]

II. THE JOINT EMPLOYERS FAILED TO PROVE THAT CESSATION OF THEIR JOINT OPERATIONS IS BOTH IMMINENT AND DEFINITE.

A. FACTUAL BACKGROUND OF PROGRESS

Progress is a licensed environmental mediation and demolition contractor. It provides asbestos abatement, lead abatement, PCB (a type of oil) remediation, and demolition services in Maryland, Washington, D.C., Virginia, West Virginia, and Pennsylvania. Since 2012, Progress has worked on approximately 600 different jobs. At the time of the hearing, Progress had about 12 ongoing projects, including Laurel Hill, an asbestos abatement, lead remediation, and demolition project in Lorton, Virginia. Projects performed by Progress have a wide range of durations, anywhere from one day to six months. In addition to its directly-employed employees, Progress sometimes subcontracts with one of four or five labor supply companies, including Aguilar-Hernandez. Typically, Progress will subcontract work if its volume of work increases and it needs additional workers. Of its approximately 600 jobs since 2012, Progress estimates that it subcontracted work on about 100 jobs. Of its 12 ongoing jobs at the time of the hearing, Progress only subcontracted at the Laurel Hill project; this subcontracted work has been done by Aguilar-Hernandez.

[4] I found that the record evidence of Progress' control over hiring, firing, discipline, supervision, direction of work, work hours, and wages as sufficient for the issue of whether Progress and Aguilar-Hernandez are joint employers of the petitioned-for unit employees.

B. FACTUAL BACKGROUND OF AGUILAR-HERNANDEZ

Aguilar-Hernandez is in the business of providing laborers to contractors in projects involving demolition, lead abatement, and asbestos removal. Aguilar-Hernandez charges an hourly rate for each laborer, and pays its employees directly after invoicing the contractor.

C. DETAILS OF THE PROGRESS AND AGUILAR-HERNANDEZ RELATIONSHIP

Progress subcontracted with Aguilar-Hernandez for approximately 20 jobs since 2012, four of which were in the last year. Typically, Progress will contact Aguilar-Hernandez via text message, one or two days before Progress needs additional workers, providing the number of workers it needs, the work location, supervisor, and start time. Progress does not generally include the need for contract labor in its bids for work; instead, it subcontracts as the need arises during the life of a project. At the time of the hearing, Progress was submitting about five bids a week. None of Progress' bids call for the use of contract labor, and none involve Aguilar-Hernandez. Progress does not have a master labor services agreement with Aguilar-Hernandez. However, Aguilar-Hernandez maintains a price sheet that lists the hourly rate for its laborers.

The Laurel Hill project began in December 2015, and was completed on or before June 24, 2016. Progress used Aguilar-Hernandez workers at Laurel Hill to do demolition work, pipe removal, and general clean-up. Before the start of that project, Progress had not used Aguilar-Hernandez's workers for about six to eight months. The Laurel Hill project was made up of ten discrete work packages; by the hearing date, all packages were completed except for package ten. The first nine packages were completed on by the deadline set by the general contractor of the project. Before completing package ten, Progress intended to cut back its own employees and lay off Aguilar-Hernandez's employees. At the time of the hearing, Progress did not have any work planned with Aguilar-Hernandez in the foreseeable future.

D. BOARD LAW

The Act directs the Board, upon the filing of a representation petition, to investigate whether a question of representation exists, including by holding an appropriate hearing. 29 U.S.C. § 159(c)(1). It further directs that "[if] such a question of representation exists, the Board shall direct an election . . . and certify the results thereof." *Id.* The Board has recognized a narrow exception to this statutory mandate, limited to circumstances in which it is reasonably certain that conducting an election will serve no purpose: it will dismiss an election petition when cessation of the employer's operations is imminent, such as when an employer completely ceases to operate, sells its operations, or fundamentally changes the nature of its business. See *Retro/Green JobWorks*, 364 NLRB No. 70 (2016), citing *Hughes Aircraft Co.*, 308 NLRB 82, 83 (1992); *Martin Marietta Aluminum*, 214 NLRB 646, 646-647 (1974); *Cooper International*, 205

NLRB 1057, 1057 (1973). The party asserting an imminent cessation of operations bears the burden of proving that cessation is both imminent and definite. *Hughes Aircraft Co.*, 308 NLRB at 83; *Martin Marietta Aluminum*, 214 NLRB at 647. The Board requires concrete evidence, such as announcements of business closure to the public and the employees, termination of employees, or other evidence that the employer has definitively determined the sale, cessation, or fundamental change in the nature of its operations. *Hughes Aircraft Co.*, 308 NLRB at 83; *Martin Marietta Aluminum*, 214 NLRB at 646-647. The Board will not dismiss an election petition based on conjecture or uncertainty concerning an employer's future operations, an employer's contention that it intends to cease operations or reduce its workload sometime in the future, or evidence of cessation that is conditional or tentative. See *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

In *Davey McKee*, the Board denied a request for review of a Regional Director's dismissal of a petition, largely based on the evidence that the employer's ongoing construction projects were due to be completed within 29 days of the hearing, and that the unit employees would be terminated at that time. *Davey McKee Corp.*, 308 NLRB at 840. In dismissing the petition, the Regional Director found that the petitioner's uncorroborated hearsay testimony that the employer had outstanding bids for work in the area, and the potential for other bids, was conjectural and insufficient to warrant an election. *Id*. at 840.

The Board, in *Fish Engineering*, distinguished *Davey McKee,* explaining that the uncontradicted findings of the Regional Director in *Davey McKee* were that the employer's operations would imminently cease and all employees would be terminated. *Fish Engineering & Construction Partners, Ltd.,* 308 NLRB 836 (1992). By contrast, the Board found that a useful purpose would be served by conducting an election in *Fish Engineering* because it was undisputed that the employer had worked on several recent projects in the area and had bid on future work within the scope of the petitioned-for unit. *Id.* In its decision, the Board rejected the Regional Director's finding that "it was speculative as to whether the [e]mployer would secure additional work within the geographic boundaries of the petitioned for unit." *Id*.; see also *S. K. Whitty & Co.*, 304 NLRB 776 (1991). In doing so, the Board relied on *S. K. Whitty*, where it directed an election when the employer had no commitments for future work, but planned to bid on projects and would remain in the geographic area. *Id*.

In the recently-decided *Retro/Green Job Works*, the Board found that although there were no current projects scheduled between the joint employers, that fact was insufficient to find an imminent cessation of operations under *Fish Engineering*. *Retro/Green JobWorks*, 364 NLRB at slip op. 4-5. Instead, the Board stressed that the joint employers were not ceasing to operate, nor were they selling their operations, fundamentally changing the nature of their businesses, or moving. *Id*. (citing *Martin Marietta Aluminum*, 214 NLRB at 646-647; *Hughes Aircraft Co.*, 308 NLRB at 83; *Cooper International*, *Inc.*, 205 NLRB 1057, 1057 (1973)). Correspondingly, the Board found that the joint employers would continue to operate in the same geographic area. *Id*. Retro would continue to perform demolition and asbestos abatement services. *Id.* Green

JobWorks would continue to provide laborers to perform these services in the geographical area as well. *Id*. The Board further stated that "[t]he fact that Retro and Green JobWorks' two projects were, at the time of the hearing, scheduled to end shortly does not outweigh those considerations." *Id*. Furthermore, the Board has recognized that unpredictable projects of limited duration are typical in the construction industry. *Id*. at slip op. 5 (citing *Clement-Blythe Cos.*, 182 NLRB 502 (1970)). Additionally, unlike in *Davey McKee Corp.*, 308 NLRB at 840, where the employer had no ongoing projects within the geographic area, at the time of the hearing in this case, Retro had other projects that would continue beyond July 2015. *Id*. The Board went on to explain that, significantly, there was no evidence that the employers intended to discontinue their working relationship or that they would not continue to work together in the future. *Id*. Although, at the time of the hearing, Retro and Green JobWorks had no current projects or bids for future projects together, Green JobWorks had provided Retro with laborers on more than 10 projects (possibly more than 20) over 5 years. *Id*. Moreover, Retro's president testified that he was satisfied with Green JobWorks' services and did not envision terminating the relationship. *Id*. The Board explained that the evidence of a successful working relationship over time likened this case more to *Fish Engineering* than *Davey McKee*. *Id*. In sum, the Board found that the employers failed to meet their burden of proving that a cessation of their joint operations was imminent and definite. *Id*.

E. POSITIONS OF THE PARTIES

The Petitioner's position is that the putative joint employers' operations will not cease in the near future, and an election is appropriate. The Petitioner distinguishes this case from *Davey McKee*, noting that the employer in that case was going out of business, its job was winding up, and it had no outstanding bids on future work. Here, on the other hand, the Petitioner argues that Progress submits an average of five bids for work a week, and that Progress has a four-year relationship with Aguilar-Hernandez. According to the Petitioner, the fact that Progress' bids do not include Aguilar-Hernandez specifically is irrelevant because, based on past practice, Progress only provides Aguilar-Hernandez a day or two's notice when Progress needs labor for an ongoing project.

Progress argues that: (1) the undisputed testimony of Progress' president establishes that Progress has no intention of working with Aguilar-Hernandez again[5]; and (2) Progress has not worked with Aguilar-Hernandez since June 17, 2016. On the first point, Progress cites to *Retro* for the proposition that employers fail to prove an imminent cessation of work where there is no evidence they intend to discontinue their working relationship. Here, in contrast, Progress argues that its president's testimony provides evidence that the putative joint employers here *do* intend to discontinue their working relationship. The second point will be discussed below.

[5] The Employer refers to the following testimony from the hearing from its president that, while it had been satisfied with its labor supply business relationship with Aguilar-Hernandez in the past, there was a "big issue" about the possible non-incorporation of Aguilar-Hernandez, which Progress' president said could make it "challenging" to work with Aguilar-Hernandez in the future.

F. APPLICATION OF BOARD LAW TO THE FACTS

As explained below, I find that Progress and Aguilar-Hernandez have not met their burden to establish that their joint-employment relationship involving the petitioned-for unit of employees will soon cease. The facts of this case are substantially similar to those in *Retro/Green JobWorks*. Here, like in *Retro,* the petitioned-for unit includes employees of both a user employer and a supplier employer, who is a subcontractor that provides labor for demolition and asbestos abatement services. In *Retro/Green JobWorks*, Green JobWorks supplied laborers to Retro on between 10 and 20 projects over the previous five years; here, Aguilar-Hernandez supplied laborers to Progress on about 20 projects over four years. Also, like *Retro/Green JobWorks*, at the time of the hearing, the only ongoing, joint project was slated to end shortly, and the user and supplier employers had no current bids or projects together. In both this case and in *Retro/Green JobWorks*, unlike the company in *Davey McKee*, there is no evidence on the record that either the user employer or the supplier employer is shutting down operations, changing the nature of their work, or moving to a different geographical area; to the contrary, both employers intend to conduct business as usual. Here, Progress submits about five bids a week, and none of the bids include Aguilar-Hernandez. In *Retro/Green JobWorks*, the lack of outstanding bids, or security of future work as joint employers, was insufficient to prove that a cessation of their joint operations was imminent and definite. *Id*. at slip op. 4 (citing *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976) (the Board will "not dismiss an election petition based on conjecture or uncertainty concerning an employer's future operations, an employer's contention that it intends to cease operations or reduce its workload sometime in the future, or evidence of cessation that is conditional or tentative")).

Here, the only evidence in the record that distinguishes this case from *Retro/Green JobWorks* is Progress president's testimony that he is less likely to work with Aguilar-Hernandez in the future because of the possibility that Aguilar-Hernandez is not incorporated. However, I consider that this testimony alone is insufficient to establish the "concrete evidence" required to prove cessation of operations under the Board's decision in *Retro/Green JobWorks*. 364 NLRB at slip op. 4 ("The Board requires concrete evidence, such as announcements of business closure to the public and the employees, termination of employees, or other evidence that the employer has definitely determined the sale, cessation, or fundamental change in nature of its operations."). I consider the testimony, that it was potentially more challenging to work with Aguilar-Hernandez in the future, is more equivocal and insufficient under the evidentiary burden articulated by the Board in *Retro/Green JobWorks*.

Turning to Progress' second stated defense, whether or not Progress and Aguilar-Hernandez continued working on the Laurel Project after June 16, 2016, does not substantively change the analysis. Again, under *Retro/Green JobWorks*, the Board requires more than evidence that a current project has ended or will soon end. Instead, it requires "concrete evidence" that the business relationship is permanently severed. The conclusion of the putative joint employers' working relationship on this particular project is not evidence of a permanent change to the ongoing employment relationship.

G. CONCLUSION

Based on this analysis, I direct that an election be conducted for the petitioned-for unit employees.

III. DIRECTION OF ELECTION

I am now tasked with determining whether there is a question concerning representation under the National Labor Relations Act,[6] and, if there is, what is the appropriate method and means to conduct an election. First, I find that the petitioned-for unit is appropriate. The unit is:

> All full-time and regular part-time jointly-employed construction, demolition laborers, and environmental abatement workers jointly employed by Progress Environmental, LLC and Ever Aguilar-Hernandez d/b/a General Laborers, excluding clerical, confidential, and management employees, professionals, guards, and supervisors as defined in the Act.

I also find that, for eligibility purposes, it is most appropriate to use the *Daniel/Steiny* formula for employees working in the construction industry. As explained above, Progress and Aguilar-Hernandez are involved in the construction industry. Aguilar-Hernandez is a staffing agency engaged in the business of providing temporary demolition and asbestos abatement laborers to an unknown number of construction company clients, including Progress. Progress is a licensed environmental mediation and demolition contractor that provides asbestos abatement, lead abatement, PCB (a type of oil) remediation, and demolition service to private and government entities. The construction industry eligibility formula set forth in *Daniel Construction Co.*, 133 NLRB 264 (1961), and *Steiny & Co.*, 308 NLRB 1323 (1992) applies to all employees in the construction industry. In *Steiny*, the Board held that the construction industry eligibility formula applies to all construction industry elections unless the parties stipulate not to use it. *Steiny*, supra at 1327-28 and fn. 16. Here, it is undisputed that Progress and Aguilar-Hernandez operate in the construction industry. Further, the parties stipulated to the use of the *Daniel* formula during the June 2016 hearing. Accordingly, I find that the *Daniel/Steiny* formula is applicable to this case.

[6] Neither Progress nor Aguilar-Hernandez sought Board review of my prior findings that Progress and Aguilar-Hernandez did not meet their burdens of establishing that the petition should be dismissed because the petitioned-for unit employees are temporary, nor did they meet their burdens of establishing that the petition should be dismissed as premature because of a lack of a substantial and representative complement of employees in the petitioned-for unit.

I have also determined that a mail ballot election will be held. Mail balloting may be used in certain circumstances, such as where the eligible voters are scattered because of their duties or work schedules. In such situations, I may conduct an election by mail ballot, taking into consideration the desires of the parties, the ability of voters to understand mail ballots, and the efficient use of personnel. *San Diego Gas & Electric*, 325 NLRB 1143 (1998). At the hearing in June 2016, the Petitioner requested a mail ballot election. Both Progress and Aguilar-Hernandez refused a mail ballot election and failed to agree on or stipulate a designated location for a manual election. Given the parties' positions, as well as the fact that there are a presently-unknown number of employees eligible to vote under the *Daniel/Steiny* formula and taking into account the efficient use of Board personnel, I find a mail ballot will best allow the unit employees the ability to exercise their right to vote in the election.

IV. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. Progress Environmental, LLC is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction therein.

3. Ever Aguilar-Hernandez d/b/a General Laborers is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction therein.

4. Progress Environmental, LLC and Ever Aguilar-Hernandez d/b/a General Laborers are joint employers within the meaning of the Act of the employees in the petitioned-for unit.

5. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer, and the Employer declines to recognize the Petitioner.

6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

7. The following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time jointly-employed construction and demolition laborers, including environmental abatement workers, excluding clerical, confidential, and management employees, professionals, guards, and supervisors as defined in the Act.

V. DIRECTION OF ELECTION ORDER

The National Labor Relations Board will conduct a secret ballot election by mail among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Construction and Master Laborers' Local 11, a/w Laborers' International Union of North America (LIUNA).

A. Election Details

As described above, the election will be held by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 5, Bank of America Center, Tower II, 100 S. Charles Street, Ste. 600, Baltimore, MD 21201, on November 29, 2016 at 3:00 p.m. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will automatically be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the National Labor Relations Board by calling the Baltimore Regional Office collect at (410) 962-2219 by no later than 4:45 p.m. on December 6, 2016 in order to arrange for another mail ballot kit to be sent to that employee.

The mail ballots will be counted at the Baltimore Regional Office of the National Labor Relations Board, Region 5 at 3:00 p.m. on December 20, 2016. In order to be valid and counted, the returned ballots must be received in the Baltimore Regional Office of the National Labor Relations Board, Region 5 prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending May 28, 2016, as stipulated by the parties at the June 2016 hearing, including employees who

did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date, or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Region and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Region and the parties by **TWO business days after the date of issuance**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-April-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties name in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

VI. Right to Request Review

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: November 16, 2016

(SEAL)

/s/ Charles L. Posner

Charles L. Posner, Regional Director
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